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AUDIO SERVICES DIVISION

Before the
FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

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APR 12 2004

Federal Communication Commission
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In the Matter of)

Amendment of Section 73.202(b),)

Table of Allotments,)

FM Broadcast Stations.)

(Shallotte, Wrightsville Beach,)

Topsail Beach, and Richlands, North Carolina)

MB Docket No. 04-_____

RM-_____

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APR 14 2004

Federal Communications Commission
Office of the Secretary

To: Assistant Chief, Audio Division, Media Bureau

PETITION FOR RULE MAKING

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April 12, 2004

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Summary

Sea-Comm, Inc. holds licenses from the Commission for FM radio stations WBNU in Shallotte, North Carolina, WBNE in Wrightsville Beach, North Carolina, and WWTB in Topsail Beach, North Carolina. In this Petition for Rule Making, Sea-Comm, Inc. asks the Commission to initiate a public-notice-and-comment rule making proceeding for the purpose of amending the Table of Allotments for FM Broadcast Stations by (i) upgrading the allotment currently occupied by WBNU and removing the upgraded allotment from Shallotte to Wrightsville Beach, (ii) substituting a first-adjacent-channel allotment for WWTB's allotment at Topsail Beach, downgrading the substituted allotment, and removing the allotment (as substituted and downgraded) from Topsail Beach to Richlands, North Carolina, as that community's first local aural transmission service, and (iii) upgrading the allotment currently occupied by WBNE and removing the upgraded allotment from Wrightsville Beach to Topsail Beach.

In this Petition for Rule Making, Sea-Comm demonstrates that the requested amendments to the Table of Allotments comport with the requirements of Section 1.420(i) of the Commission's Rules, such that competing expressions of interest or applications for construction permits for new stations to operate on the upgraded/substituted-and-downgraded/removed allotments in the new communities should not be entertained. Specifically, Sea-Comm demonstrates, by reference to supporting engineering data, that (a) the proposed new allotments in Wrightsville Beach, Richlands, and Topsail Beach are mutually exclusive with the current allotments of the affected channels at the communities of Shallotte, Topsail Beach, and Wrightsville

Beach, respectively; (b) no community would be left without a local aural transmission service; and (c) the proposed new allotments at Wrightsville Beach, Richlands, and Topsail Beach represent a preferential arrangement over the existing set of allotments at Shallotte, Topsail Beach, and Wrightsville Beach, respectively, under Commission precedent.

To be precise, the Petition for Rule Making establishes that Richlands is a community deserving of its own local aural transmission service, which would be a first service specifically for Richlands and not an additional service to the nearby Jacksonville, North Carolina Urbanized Area. Sea-Comm further demonstrates that as a result of the amendments to the Table of Allotments proposed herein, radio service will be available to a net population gain of nearly 150,000 persons residing in a net gain area of nearly 4,000 square kilometers.

Sea-Comm commits herein promptly to apply to the Commission for authorizations to implement the proposed changes in the Table of Allotments, if those changes are adopted as set forth in this Petition.

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Amendment of Section 73.202(b),)	MB Docket No. 04-_____
Table of Allotments,)	RM-_____
FM Broadcast Stations.)	
(Shallotte, Wrightsville Beach,)	
Topsail Beach, and Richlands, North Carolina)	

To: Assistant Chief, Audio Division, Media Bureau

PETITION FOR RULE MAKING

Sea-Comm, Inc. ("Petitioner"), the licensee of primary commercial FM radio broadcasting stations WBNU, Shallotte, North Carolina ("WBNU"), WBNE, Wrightsville Beach, North Carolina ("WBNE"), and WWTB, Topsail Beach, North Carolina ("WWTB;" WWTB, with WBNU and WBNE, collectively, the "Sea-Comm Stations"), by its counsel and in accordance with Section 1.420(i) of the Commission's Rules, 47 C.F.R. Section 1.420(i) (2003), hereby respectfully petitions the Commission to initiate a rule making proceeding for the purpose of amending the Table of Allotments for FM Broadcast Stations, 47 C.F.R. Section 73.202(b) (2003) (the "Table"). Petitioner requests the Commission issue for public comment a *Notice of Proposed Rule Making* that will propose to amend the Table in the following manner:

Community	Channel	
	Present	Proposed
Shallotte, NC	279C3, 292A	292A
Wrightsville Beach, NC	229A	279C2
Topsail Beach, NC	280C3	229C3
Richlands, NC	---	281A

More specifically, Petitioner desires to (i) upgrade the channel allotment currently occupied by WBNU from Channel 279C3 to Channel 279C2, and remove the upgraded allotment from Shallotte to Wrightsville Beach; (ii) in order to accommodate the change set forth in Clause (i), substitute for, and downgrade, the channel allotment currently occupied by WWTB from Channel 280C3 to Channel 281A, and remove the substituted/downgraded allotment from Topsail Beach to Richlands, North Carolina, as Richlands' first local aural transmission service; and (iii) in order not to leave Topsail Beach without a local aural transmission service as a result of the change set forth in Clause (ii), upgrade the channel allotment currently occupied by WBNE from Channel 229A to Channel 229C3, and remove the upgraded allotment from Wrightsville Beach to Topsail Beach. As is set forth elsewhere in this Petition for Rule Making ("Petition"), the proposed changes to the Table are mutually exclusive with the existing allotments in the Table that would be affected, and would result in a preferential arrangement of allotments. Consequently, the proposals set forth herein qualify for treatment under Section 1.420(i), such that the channel allotments in question -- as upgraded, substituted/downgraded, and removed to new communities pursuant to the proposals herein -- would not be available for competing applications. If the Table is amended in

the manner set forth in this Petition, Petitioner hereby commits to promptly applying to the Commission for modified authorizations for the Sea-Comm Stations in order to reflect those changes.

Satisfaction of the Requirements for Invoking Section 1.420(i)

In *Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990), the Commission determined that an FM radio broadcasting station may change its community of license without subjecting the station's channel allotment in the new community to competing expressions of interest under the following circumstances: (i) the new allotment is mutually exclusive with the existing allotment; (ii) no community would be deprived of its only local aural transmission service; and (iii) there would result a net service benefit for the communities involved (*i.e.*, there would result a preferential arrangement of allotments).¹ *Id.*, 4 FCC Rcd at 4873-74. Petitioner's proposal satisfies those requirements.

Mutual Exclusivity of Allotment Proposal versus Existing Allotments; No Community Left without Local Aural Transmission Service

Attached to this Petition as Appendix A is the Technical Statement of Jefferson G. Brock of the firm of Graham Brock, Inc. in St. Simon's Island, Georgia,

¹ The FM allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters. *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88, 91-92 (1982).

Petitioner's broadcast engineering consultant, dated March 23, 2004 ("Technical Statement"). The Technical Statement establishes that the proposed re-arrangement of the allotments presently occupied by WBNU, WWTB, and WBNE is mutually exclusive with the current allotments for those stations,² a prerequisite for invoking Section 1.420(i).³ The removal of WBNU's channel allotment from Shallotte to Wrightsville Beach will not deprive Shallotte of its sole local aural transmission service.⁴ The removal of WWTB's channel allotment from Topsail Beach to Richlands will not deprive Topsail Beach of its sole local aural transmission service, inasmuch as Channel 280C3 at Topsail Beach would be replaced by an equivalent-class channel, WBNE's upgraded and relocated Channel 229C3. The removal of WBNE's channel allotment from Wrightsville Beach to Topsail Beach will not deprive Wrightsville Beach of its sole local aural transmission service, inasmuch as Channel 229A at Wrightsville Beach would be replaced by a higher-class allotment, WBNU's upgraded Channel 279C2. In short, when all of these changes are effectuated, no community will be left without a local aural transmission service; the communities of Wrightsville Beach and Topsail Beach will each

² Technical Statement, at Para. 1 ("In each case, the respective existing channel at each community is mutually exclusive with the respective proposed channel for that community.")

³ The Technical Statement also demonstrates compliance on the part of the proposals set forth in this Petition with the Commission's distance separation and city-grade coverage requirements in all respects. Technical Statement, at Paras. 2, 3, and 4.

⁴ Channel 292A, occupied by Petitioner's primary commercial FM radio broadcasting station WLTT, will remain allotted to Shallotte. In addition, as noted in the Technical Statement, primary AM radio broadcasting station WVCB will remain licensed to Shallotte. Technical Statement, at Para. 6.

receive either an equivalent-class or a higher-class replacement allotment for the existing allotment; the community of Richlands will receive a first local aural transmission service; and there will be an overall net gain in area and population covered by the signals of the stations involved.

Preferential Arrangement of Allotments: First Local
Aural Transmission Service to Richlands, North Carolina

The provision of a first local aural transmission service to Richlands, under the Commission's third FM channel allotment priority, note 1, *supra*, represents a preferential arrangement of allotments over the retention of existing services at Shallotte, Wrightsville Beach, and Topsail Beach, which would qualify for consideration only under the fourth allotment priority ("other public interest matters").

Richlands is incorporated and is listed in the 2000 U.S. Census as a town with a population of 928 persons;⁵ hence it is presumed to enjoy "community" status for purposes of an FM radio broadcasting station channel allotment. *Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Hazlehurst and Bude, Mississippi)*, 10 FCC Rcd 2164 (Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau, 1995) (Bude, Mississippi, though not an incorporated town, is an incorporated place listed in U.S. Census with a population of 969 persons and is found to be a "community" for channel allotment purposes). There are currently no local aural

⁵ See <http://factfinder.census.gov>.

transmission services in Richlands. Richlands is not located in an Urbanized Area.⁶ However, from the site for the allotment of Channel 281A to Richlands, WWTB's proposed predicted 70 dBu field-intensity signal contour would cover approximately 84.1% of the Jacksonville, North Carolina Urbanized Area.⁷ Accordingly, Petitioner's proposal comes within the Commission's policy expressed in *Faye & Richard Tuck, Inc.*, 3 FCC Rcd 5374 (1988), concerning the migration of stations into urban areas.⁸ In determining whether to award a first local service preference to a community where the station in question would place a signal having a predicted field intensity of 70 dBu or better over 50% or more of a nearby Urbanized Area, the Commission will consider (i) the degree to which the proposed station would provide service to the entire Urbanized Area, (ii) the size of the community compared to the adjacent city and its proximity to the city, and (iii) the interdependence of the community with the central city. *Tuck*, at 5377-78.

⁶ Technical Statement, at Para. 10.

⁷ *Id.*

⁸ We note that the upgrade and reallocation of WBNU's channel allotment from Channel 279C3 in Shallotte – which is outside of any Urbanized Area – to Channel 279C2 in Wrightsville Beach involves the migration of a channel from outside of an Urbanized Area into one. However, as noted in the Technical Statement, such reallocation is being done in order to replace the service currently provided by WBNE's channel allotment – Channel 229A in Wrightsville Beach – which is proposed to be upgraded to Channel 229C3 and relocated to Topsail Beach. Hence, Petitioner is not seeking, by the reallocation of Channel 279C3 from Shallotte to Wrightsville Beach, to claim a first local aural transmission service at Wrightsville Beach or other basis for alleging a preferential arrangement of allotments with respect to that aspect of this Petition, and there is no occasion for invoking the *Tuck* principles with respect to such a reallocation. See Technical Statement, at note 4.

Concerning the first factor, the predicted 70 dBu field-intensity signal contour of WWTB would encompass approximately 84% of the Jacksonville Urbanized Area; the predicted 60 dBu field-intensity signal contour of WWTB would encompass 100% of the Jacksonville Urbanized Area.⁹ However, coverage of the entirety of the nearby Urbanized Area has not been fatal under *Tuck*; see, e.g., *Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Park City, Montana), Report and Order in MM Docket No. 02-79 (RM-10424)*, 19 FCC Rcd ___, 69 Fed. Reg. 8334 (published February 24, 2004), DA 04-285, adopted February 4, 2004 and released February 9, 2004, at Para. 12 (Assistant Chief, Audio Division, Media Bureau, 2004) (“As to the first factor, the proposed station will provide service to the entire Billings, Montana Urbanized Area as well as to the allotment community;” *Tuck* found no bar to allotment of channel to nearby smaller community of Park City, Montana).

As to the second *Tuck* factor, Richland’s population is 928 persons, whereas the population of Jacksonville, North Carolina (the central city of the Jacksonville Urbanized Area) is 66,715 persons,¹⁰ Richlands’ population thus being approximately 1.4% of Jacksonville’s. However, disparities of even greater magnitude have not precluded the Commission from finding that the named community is sufficiently independent of the central city in the nearby Urbanized Area to merit a first-local-service preference under *Tuck*. See, e.g., *Park City, Montana, supra*, at Para. 12

⁹ Technical Statement, at Para. 10 and n. 7.

¹⁰ See note 5, *supra*.

(population of Park City, Montana – 870 persons – only 0.97% of the population of nearby Billings, Montana – 89,847 persons – did not deprive Park City of claim to first local aural transmission service preference under *Tuck*).

Richlands is located 19.5 kilometers (12.1 miles) from Jacksonville.¹¹ The Commission has held that even smaller distance separations between the named community and the central city of the nearby metropolitan area do not require a finding under *Tuck* that the named community is dependent upon the metropolitan area. *See, e.g., Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Headland, Alabama and Chattahoochee, Florida)*, 10 FCC Rcd 10352, 10355 (Chief, Allocations Branch, Media Bureau, 1995) (city centers of named community and of central city of nearby Urbanized Area only 12.9 kilometers – 8.0 miles – apart, and city limits approximately 1.6 kilometers – 1.0 mile – apart at one point; *Tuck* held not to bar first local aural transmission service claim for named community).

The Commission has held, however, that the foregoing two factors of *Tuck* are not as important as the third factor: the independence of the named community from the central city. *Headland, Alabama, et al., supra*, 10 FCC Rcd at 10355. It is clear that Richlands is independent from Jacksonville when analyzed under the eight criteria set forth in *Tuck*:

¹¹ Technical Statement, at note 8.

(1) the extent to which community residents work in the larger metropolitan area, rather than in the specified community; (2) whether the smaller community has its own newspaper or other media that covers [sic] the community's local needs and interests; (3) whether community leaders and residents perceive the specified community as being an integral part of, or separate from, the larger metropolitan area; (4) whether the specified community has its own local government and elected officials; (5) whether the smaller community has its own telephone book provided by the local telephone company or zip code; (6) whether the community has its own commercial establishments, health facilities, and transportation systems; (7) the extent to which the specified community and the central city are part of the same advertising market; and (8) the extent to which the specified community relies on the larger metropolitan area for various municipal services such as police, fire protection, schools, and libraries.

Tuck, 3 FCC Rcd at 5378.

(1) Place of work. According to 2000 U.S. Census data, 37.3% of the residents of Richlands work in their place of residence,¹² which demonstrates independence from the Jacksonville Urbanized Area on this first factor. *Cf.*, *Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Anniston and Ashland, Alabama, and College Park, Covington, Milledgeville, and Social Circle, Georgia)*, 16 FCC Rcd 3411, 3413 (Chief, Allocations Branch, Media Bureau, 2001) (finding the first *Tuck* element satisfied when 16% of the community residents worked in the community).

(2) Local newspaper. Richlands has its own weekly community newspaper, the *Richlands-Beulaville Advertiser Times*. According to a web

¹² See note 5, *supra*.

site maintained by its publisher, H.L. Oswald Enterprises, Inc., the newspaper has been published since 1976, and reports on local news and area happenings. *See* www.hloprint.com.

(3) Perception of community leaders. Attached to this Petition as Appendix B is the Statement of Greg Whitehead, the Town Administrator of the Town of Richlands, dated April 7, 2004. Mr. Whitehead, who has served as Richlands' Town Administrator for the past six (6) years, states that he and other residents of Richlands "... consider our town to be separate from the City of Jacksonville, North Carolina." He proceeds to provide his reasons for that statement.

(4) Own local government and elected officials. Richlands has its own local government and elected officials, including a Mayor, a Mayor *Pro Tem*, and four Aldermen. It also has a Town Administrator, Town Tax Assessor, and Town Clerk. The town government is based in the Richlands Town Hall.

(5) Own telephone book or zip code. The town of Richlands has its own zip code: 28574. This zip code is not associated with any other city or town. Although it does not have its own telephone book, Richlands does have its own separate listings section in the Jacksonville, North Carolina area telephone directory.

(6) Own commercial establishments, health facilities and transportation systems. There are numerous businesses located within the town of Richlands. They include RBC Centura Bank, Keene's Motor Lodge, Kerr Drug, Family

Hair Styling, Tracey's Florist & Gift Shop, and Guy C. Wiggins Hardware, just to name a few. In fact, a number of those businesses use the name of their town in their own names, for example, CC Dance Academy of Richlands, Richlands Community Outreach, Richlands Insurance & Realty, Richlands Barber Shop, Richlands Head Start Center, Richlands Masonic Lodge, Richlands Mini-Storage, Richlands Monument Co., Richlands Motor Sales, Richlands Tire Service, Richlands True Value, and Richlands Village Cleaners. In addition, Richlands is home to the Onslow County Museum of History and the town itself also has an historic district. Residents of Richlands can do their grocery shopping at the following stores, all located in Richlands: Food Lion, Piggly Wiggly, Craft's Country Store, Hoffman's Grocery, and J&N Grocery. In addition, a variety of different restaurants are located in Richlands, including Andy's Cheesesteaks, Arnold's Family Restaurant, Denny's Pizza, Domino's Pizza, Hardee's, Lakeview Café & Grocery, Main Moon, McDonald's, Newbold's Carolina Barbecue, and Tienda y Taqueria La Norteña. Residents of Richlands can obtain medical attention at the Onslow Medical Center, located in Richlands. There is also an assisted living center, a local chiropractor, and a dentist's office in Richlands to serve the needs of the community. Richlands has approximately 20 religious establishments, including the Richlands Church of Christ, the Richlands First Free Will Church, the Richlands United Methodist Church, and the Richlands Pentecostal Assembly. The town of Richlands is home to many annual festivals, including a Civil War re-enactment in April, a quilt show in September, a Farmers Day in September, an Arts & Crafts Festival in November, and a Candlelight Christmas Parade and Nativity Processional in December.

(7) Extent to which Jacksonville and Richlands are part of the same advertising market. Both Richlands and Jacksonville are included in Arbitron's Greenville-New Bern-Jacksonville, North Carolina market (Arbitron's 84th largest market),¹³ and both are also in Nielsen Media Research's Greenville-New Bern-Washington, North Carolina Designated Market Area (Nielsen's 103rd largest Designated Market Area).¹⁴

(8) Police, fire protection, schools and libraries. Law enforcement services are provided to the town by the Richlands Police Department, and the Richlands Fire Department offers the residents fire protection services. Richlands has several public schools, consisting of Richlands High School, Trexler Middle School, Richlands Elementary School, and Richlands Primary School; however, they are part of the Onslow County, North Carolina School District. Similarly, Richlands also has a public library, the Richlands Public Library, but it is a part of the Onslow County Public Library System.

A review of these eight criteria demonstrates that Richlands is independent from the city of Jacksonville on the majority of them (Criteria ## 1, 2, 3, 4, and 6); and even in one instance (Criterion # 5) where Richlands' independence from Jacksonville is not established beyond a doubt (Richlands and Jacksonville share the same telephone directory), there is at least a strong suggestion of such independence (Richlands has its

¹³ *Broadcasting and Cable Yearbook, 2003-04*, at p. D-758.

¹⁴ *Television and Cable Factbook, 2003*, Vol. I, at p. A-1151.

own zip code, separate and apart from Jacksonville's). Hence, Richlands is deserving of a first local preference under *Tuck*. See *Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Parker and Port St. Joe, Florida)*, 11 FCC Rcd 1095, 1096 (Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau, 1996) (where majority of eight factors under *Tuck*'s third, or "independence," criterion favored finding of independence, *Tuck* held not to bar first local aural transmission service preference for Parker, Florida, notwithstanding facts that Parker did not have its own telephone directory, or its own newspaper, and was part of the Panama City, Florida Arbitron market).

Preferential Arrangement of Allotments: Expanded
Service from the Sea-Comm Stations

In addition, according to the Technical Statement, there would be overall net gains in population and area served by the affected stations' 60 dBu field-intensity signal coverage contours resulting from the changes to the Table proposed herein, such gains summarized as follows:¹⁵

¹⁵ Technical Statement, at Paras. 7, 8, and 9. It should be noted that all gain and loss areas and populations are currently served by five or more other full-time radio broadcast stations, so no such area or population is deemed to be underserved in accordance with the Commission's policies.

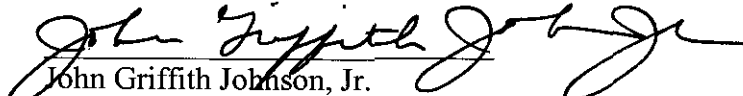
<u>Station:</u>	<u>Gain Area:</u>	<u>(Loss Area):</u>	<u>Net Area Gain/(Loss):</u>	<u>Gain Population:</u>	<u>(Loss Population):</u>	<u>Net Population Gain/(Loss):</u>
WBNU:	5,813.3 sq. km.	(2,086.4 sq. km.)	3,726.9 sq. km.	190,274 persons	(49,984 persons)	140,290 persons
WWTB:	1,452.1 sq. km.	(3,524.2 sq. km.)	(2,072.1 sq. km.)	22,544 persons	(40,947 persons)	(18,403 persons)
WBNE:	2,701.6 sq. km.	(408.7 sq. km.)	2,292.9 sq. km.	51,965 persons	(26,083 persons)	25,882 persons
Total Gain (Loss)/Net Gain (Loss):	9,967.0 sq. km.	(6,019.3 sq. km.)	3,947.7 sq. km.	264,783 persons	(117,014 persons)	147,769 persons

Thus, as a consequence of the adoption of the amendments to the Table proposed herein, a net gain population of nearly 150,000 persons residing in a net gain area of nearly 4,000 square kilometers will receive an additional aural service of 60 dBu or better in field strength.

Petitioner has thus demonstrated the prerequisites for invoking Section 1.420(i) and respectfully urges the Commission to adopt and issue a *Notice of Proposed Rule Making* consistent with the proposals herein set forth at the earliest practicable date. Petitioner repeats its intention promptly to apply for modified authorizations for the Sea-Comm Stations consistent with the amendments to the Table herein advocated.

Respectfully submitted,

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